

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2016

Public Authority: Wirral Council
Address: Wallasey Town Hall
Brighton Street
Wirral
Merseyside
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information relating to whether the Council had an obligation to reimburse tenants of Salisbury Independent Living (SIL) money he believed they were owed. Ultimately the Council provided much of the information requested but continued to withhold other information under the exemptions provided by section 42 – legal professional privilege and section 30(2) – confidential sources. During the course of the Commissioner's investigation the Council also applied sections 36 – prejudice to the conduct of public affairs, and 31 - law enforcement.
2. The Commissioner's decision is that the Council is entitled to rely on the exemptions provided by section 42 and 36 to withhold the requested information.
3. The Commissioner does not require the public authority to take any further action in this matter.
4. However the Commissioner does find that the Council failed to respond with the request within twenty working days of its receipt. This is a breach of section 10.

Request and response

5. A number of complaints had been made about the Council's adult social services and the charging policies it operated. This led to an independent review of the issues raised being commissioned by a firm of consultants, Anna Klanowski Associates (AKA). The independent AKA review was published in January 2012. The review identified outstanding allegations against the Council made by one particular service provider, SIL. It therefore recommended that the Council thoroughly investigated those allegations with a view to their early resolution.

6. SIL is a not for profit organisation which provides accommodation for adults with learning disabilities and mental health problems. It had previously also provided some care services to its tenants on behalf of the Council. The complainant considers the Council did not provide the tenants and former tenants of SIL with the support to which they were entitled and that as a consequence they were financially disadvantaged. He believes the Council owes these tenants money. These matters are inextricably linked to the outstanding issues identified in the independent review referred to above. As a result, the Council's Director of Adult Social Services commissioned a further review of these issues from a senior manager in the Department for Adult Social Services (DASS). It is understood the review concluded that the SIL tenants had not been financially disadvantaged and so were not owed any money. The Council referred to the outcome of that review when responding to an earlier information request from the complainant. It explained that;

"... A review of the circumstances relating to former residents of SIL was commissioned by the Director of Adult Social Services from an experienced Senior Manager in DASS with legal support.

... The review concludes that there is no evidence that individuals have not had support that they are entitled to nor have they suffered any financial disadvantage as a result of the Council's actions, there is therefore no requirement for a reimbursement process."

7. On 12 December 2014 the complainant wrote to the Council and quoted from its previous response. He went on to request information in the following terms:

"Therefore can you please provide (in the public interest) : a) the name of the "experienced Senior Manager in DASS" who reviewed the complaint b) from whom they received "legal support" and c) All correspondence between DASS Director [name of the Director], the "experienced Senior Manager in DASS" and their legal support concerning this particular complaint d) Evidence relied upon and

conclusions drawn to refute the evidence that I have provided to Wirral Council and the legal opinion of [named lawyer] ...”

8. The Council failed to provide any form of response within the statutory time limit allowed and it was only after the complainant had requested an internal review that the Council provided him with a response on 16 April 2015. The Council provided the name of the senior manager sought in part a) of the request. In response to part b) the Council explained that legal support had been received from an external resource but refused to answer parts c) and d) of the request under section 42 on the basis that the information was subject to legal professional privilege.
9. The complainant asked the Council to review this decision on 25 June 2015. The Council sent the complainant the outcome of its internal review on 18 August 2015. It now said the information sought in parts b) and c) of the request was exempt under section 42 and that the information sought in part d) was exempt under section 30(2).
10. During the course of the Commissioner's investigation the Council disclosed the name and address of the external law firm sought at part b) of the request.
11. The Council also released the majority of the information which it had, at that time, identified as falling within parts c) and d) of the request on 16 December 2015. However, initially it intended to withhold some personal information from the correspondence captured by part c) of the request under section 40. This was correspondence between the Council and the complainant himself who had been in correspondence with the Council over this matter for some time. The correspondence contains both personal data about third parties and about the complainant himself. The personal information about third parties was withheld under section 40(2) whilst the complainant's own personal data was withheld under section 40(1). In addition the Council wished to withhold the content of some of the complainant's correspondence under section 41 on the basis that the complainant had provided that information in confidence. As the complainant was already privy to this information the Council did ultimately provide him with copies of this information, albeit outside the scope of FOIA. This was on 16 December 2015.
12. However the Council continued to withhold copies of what can be regarded as the main documents that had been requested. A number were withheld under section 42 – legal professional privilege and one document was withheld under section 30(2) – confidential sources. In respect to the one document withheld under section 30(2), the Council now argued that in the event the Commissioner found section 30(2) did not apply, the information would be exempt under section 31(1)(g) – prejudice to the ability of a public authority to conduct investigations in

respect of specified functions. The Council now also applied section 36 - prejudice to the conduct of public affairs to the same document. The Council informed the complainant of this development on the 16 December 2016.

13. Towards the end of the Commissioner's investigation the Council also identified a number of communications between the senior manager who was conducting the review and the external legal adviser. The Commissioner understands that these were held by the legal adviser on behalf of the Council. The majority of these documents concerned arrangements to set up meetings and the Council was happy to disclose these to the complainant. However there was also a note of a meeting at which one of the issues discussed related to the question of whether money was owed to SIL tenants. Having looked at the document, the Commissioner is satisfied that it is only that particular minute which falls within the scope of the request. The Council withheld that minute under section 42 – legal professional privilege.
14. At the same time the Council also located an attachment to one of the chain of emails it had previously identified as falling within the scope of the request. That document was also withheld under section 42.

Scope of the case

15. The complainant originally contacted the Commissioner in March 2015 regarding the Council's handling of his request. However it was only after the complainant contacted the Commissioner on 10 September 2015, following the completion of the internal review, that the Commissioner began his investigation into the substantive issue of whether the Council was entitled to withhold the requested information.
16. At that time the information was being withheld under sections 30 and 42. In respect of section 42, the complainant challenged whether the information was capable of attracting legal professional privilege. He noted that the Council had said the investigation into whether any money was owed to SIL tenants had been conducted with 'legal support' and he questioned whether this meant the legal support had been provided by someone other than a qualified legal adviser, in which case the advice could not attract privilege. He also argued that by not paying SIL's tenants what they were owed, the Council was responsible for an unlawful activity and that legal professional privilege should not be used to cover up such wrongdoing. Finally, the complainant was already in possession of some earlier legal advice which the Council had received on this matter. This was the legal opinion referred to in part d) of his request, ie,

"d) Evidence relied upon and conclusions drawn to refute the evidence that I have provided to Wirral Council and the **legal opinion** of [named lawyer] ..."

17. The complainant believes that the Council's conclusion, that no money was owed to SIL tenants, contradicted that advice.
18. During the course of the Commissioner's investigation the complainant was asked to clarify what he intended part d) of his request to cover when referring to the "Evidence relied on...". Potentially it could be interpreted as covering all documents and contracts examined by the Council when carrying out its investigation. The complainant explained that his intended focus was much narrower. He wanted access to the arguments presented to the Director of Adult Social services together with any legal advice on which those arguments were based, which supported the Council's position that the complainant's claims that tenants were owed money were unfounded. The Commissioner is satisfied that one objective interpretation of part d) of the request is that it captures such legal advice. The Commissioner informed the Council of this position on 30 November 2015 and the Council did not challenge that view.
19. The Council has numbered the majority of the documents captured by the request when making submissions to the Commissioner and when disclosing information to the complainant. This numbering system has been adopted by the Commissioner when identifying the documents which the Council is still withholding:
 - Appendix 11 to document 12. Document 12 is an email dated 27 February 2014 from the Director to the senior manager. There is one attachment to this email, labelled Appendix 11. This has been withheld under Exemption 30(2). During the Commissioner's investigation the Council also applied section 31 in the alternative. In particular the Council argued that the information was exempt under section 31(1)(a) – prejudice to the prevention or detection of crime, and section 31(1)(g) via 31(2)(a) prejudice to an investigation for the purpose of ascertaining whether any person had failed to comply with the law. Finally the Council applied the exemption provided by section 36.
 - Document 20, is a chain of two emails, the final email of 30 September 2013 timed at 10:04 has been released. The earlier email has been withheld under section 42.
 - Document 21 is a single email and again this has been withheld under section 42

- Document 22 is a chain of 3 emails, the last one of which dated 25 November 2013 and timed at 15:45 contained an attachment. This is the same attachment as referred to in document 28 below.
- Document 23 is a chain of 4 emails, starting on the 22 November 2013 and ending on 20 January 2014 with an email from the senior manager to, amongst others, the Director. The email chain has been disclosed but the draft notes attached to the third email has been withheld. The Commissioner understands that this is being withheld under section 42.
- Document 28 is a chain of 4 emails starting on the 22 November 2013 and concluding with an email from the senior manager to the Director on 26 November 2013. The email chain has been disclosed, but a briefing note attached to the third email has been withheld under section 42.
- Document 29 is a single email dated 24 June 2014 from the senior manager to the Director dated 24 June 2014. The email has been disclosed but the attached document, which sets out the conclusions of the senior manager's review has been withheld under section 42.
- One unnumbered document consists of a chain of 4 emails beginning with one dated 13 November 2013 and concluding with one from the Director to, amongst others, the senior manager dated 13 November 2013 and timed at 15:22. The email chain has been released with the exception of the penultimate email. The Commissioner understands that this is being withheld under section 42. Attached to the original email in this chain is a briefing document which was one of the documents not identified by the Council until towards the end of the Commissioner's investigation (see paragraph 14). This briefing note has been withheld under section 42.
- A second unnumbered document is another chain of 4 emails commencing with one dated 22 November 2013 and culminating with one dated 17 December 2013 and timed at 10:15 from the senior manager to the legal adviser. Attached to the penultimate email are some drafts notes of a meeting. These are referred to above in paragraph 13. One minute from that note is captured by the request. The Council has released the emails but the relevant draft minute has been withheld under section 42. The remaining draft minutes have not been disclosed on the basis that they do not fall within the scope of the request.

- Legal advice – Wirral Borough Council, Various Former Tenants of Salisbury Independent Living, Advice. The Commissioner understands that the Council wishes to withhold this advice under section 42.

Note – the Council originally claimed that this advice did not fall within the scope of part c) of the request as it had been provided in person at a meeting between officers and their legal adviser and therefore does not constitute 'correspondence'. The Commissioner rejects this argument. Correspondence is defined as communication by letters. The Commissioner considers that the legal advice is a form of written communication, capable of being characterised as a letter and that the means by which it was delivered is irrelevant. In any event the Commissioner finds that if it did not fall within the scope of part c) of the request, it would be captured by part d) as it forms part of the evidence relied on by the Council when drawing up its conclusions.

20. The Commissioner considers the matter to be decided is whether the Council is entitled to withhold the documents identified above under the exemptions cited.

Reasons for decision

Section 42 – Legal Professional Privilege

21. The Commissioner will start by considering the application of section 42 to the information contained in the withheld documents.
22. Section 42 of FOIA states that information to which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.
23. In broad terms legal professional privilege protects the confidentiality of communications between a client and their legal adviser. This allows the client to set out the issues on which they need advice as fully as possible and the legal adviser to provide full and frank advice which may, on occasions, include the weaknesses of their client's position.
24. There are two types of legal professional privilege. Litigation privilege will apply where litigation is in prospect or contemplated. Legal advice privilege will apply where no litigation is in prospect or contemplated. The Council has asserted that the information is protected by litigation privilege and the Commissioner accepts that at the time the information in question was created there was a realistic prospect of litigation in

respect of SIL's allegations that the Council had not paid it for the services it had provided to tenants placed with it by the Council.

25. Litigation privilege has been described by the Tribunal as:

"a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and third parties if such communications or exchanges come into being for the purposes of preparing for litigation."

26. For the information to be capable of attracting legal professional privilege the information must form a communication which has been made for the dominant purpose of seeking or providing legal advice. The term 'dominant' is taken to mean the 'main' purpose for which the information was created as opposed to the sole purpose. Having looked at the information the Commissioner is satisfied that the main purpose for its creation was to either request and seek legal advice directly, or to review the substance of the allegations made against the Council and so inform that legal advice.
27. The Commissioner is therefore satisfied that the information was created for the dominant purpose of seeking or receiving legal advice within the context of potential litigation and to that extent is capable of attracting litigation privilege.
28. Another condition that needs to be satisfied in order for information to attract litigation privilege concerns the parties to the communications. As privilege serves to protect communications made for the purpose of seeking or providing legal advice, it primarily applies to information between a lawyer and their client. Having looked at the withheld information the Commissioner notes that the majority of the legal advice has been provided by an external legal adviser who is an associate within a national firm of solicitors. The Commissioner is satisfied that the lawyer in question was a qualified legal adviser and was acting in their professional capacity when providing advice to his client, the Council.
29. Any communications directly between the Council and its legal adviser are capable of attracting privilege, but the concept also extends to indirect communications. For example in an organisation as large and complex as a local authority, there will often be one or more officers dealing with a matter and liaising with their legal adviser. To inform that advice, information may have to be produced by others and then passed up through the chain of command so that it can be relayed to the legal adviser. Similarly any legal advice obtained would then have to be

disseminated through the organisation to those concerned. This can include information in the form of reports which may relay the advice in whole or in part. All such communications are capable of attracting litigation privilege.

30. The Commissioner has detailed how each of the documents withheld under section 42 satisfies the requirements for the information to be made for the dominant purpose of obtaining or providing legal advice and to qualify as a communication between the lawyer and the client within a confidential annexe which has been supplied solely to the Council. The use of the confidential annexe is necessary so that the Commissioner can provide detailed explanations of his reasoning without the risk of disclosing the nature of the advice.
31. The final test that has to be met before the information can be considered privileged is that it remains confidential. The Council has advised the Commissioner that it does not believe the advice has been made available to any third party and that it is satisfied that the advice remains privileged.
32. In light of the above the Commissioner finds that the information does attract legal professional privilege and is therefore exempt under section 42.
33. The Commissioner notes that in his submissions the complainant challenged whether the withheld information was capable of attracting legal professional privilege. He also argued that by failing to pay the SIL tenants all the benefits which he believed they were entitled to, the Council had acted unlawfully. He argued that the Council should not be allowed to use legal professional privilege to cover up such wrong doing. The Commissioner recognises that privilege cannot be applied to communications which are made with the intention of furthering a criminal purpose or aimed at assisting a crime or fraud. It is not clear to the Commissioner whether the complainant is presenting an argument along the lines of; by failing to pay the tenants their full benefit entitlement the Council is committing fraud, therefore any legal advice which assists the commission of such activity is incapable of attracting privilege.
34. Whilst the Council may have adopted a charging and payment policy that miscalculated the amount of benefits some claimants were due, this would not in itself amount to fraud. Furthermore the advice relates to how the Council should address the consequences of the policies it adopted rather than their implementation. Therefore the Commissioner finds there is nothing which prevents the information attracting privilege. The arguments presented by the complainant regarding whether it is appropriate for the Council to rely on section 42 where

there are grounds for believing the Council's policies did not accord with the law are however relevant when considering the public interest test.

Public interest

35. The public interest test is set out on section 2(2)(b) of FOIA. Information which engages an exemption subject to the public interest test can only be withheld if,

"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."
36. Problems with the Council's charging and payment policies in respect of adults with learning disabilities and mental health issues were first highlighted by a whistle blower and received extensive local media coverage. Even the briefest of internet searches identifies many articles and blogs commenting on the Council's actions and it remains an issue that attracts such attention.
37. It is clear that the charging and payment policies were very controversial. Various, related issues have been the subject of litigation, a Judicial Review and have been considered by the AKA independent review. The report of that review, which was published, was critical of the Council. It is understood that the Council has now changed how it assesses the care needs of vulnerable adults and a number have been reimbursed by the Council (but not the SIL tenants). The AKA independent review identified that there were still outstanding issues between the Council and SIL and recommended that steps be taken to resolve these matters.
38. The Council maintains the tenants of SIL are not owed any money and has publicly stated this when responding to the complainant's earlier request. Therefore there is a public interest in the Council disclosing information which would fully explain how it has come to that conclusion in light of the complexity of the issues involved. It is important that the community served by the Council has confidence that the Council has acted with integrity and in accordance with the law in this matter, in light of the critical AKA independent review.
39. The Commissioner also notes that the complainant is in possession of a legal opinion provided to the Council and he argues this advice supports his contention that the Council's approach to assessing the tenant's care needs was unlawful. Therefore there is a public interest in knowing whether the Council chose to ignore its own legal advice.
40. At the heart of this issue are the rights and entitlements of adults with learning disabilities and mental health problems. These people are

vulnerable members of society and the Council has responsibilities for safeguarding these individuals. This adds significant weight to the public interest in understanding whether the Council acted fairly towards these claimants and therefore understanding the basis on which the Council concluded they were not owed any money.

41. Any miscalculation of charges and payments would have financial implications for the Council and therefore the Council Tax payers. There is therefore a value in the public having access to information which demonstrates how competently the Council manages its financial affairs.
42. In light of the above the Commissioner considers there are important public interest factors in favour of disclosing the requested information. These include transparency of the Council's decisions to show it has acted lawfully and with integrity towards a vulnerable section of the community, whether it followed relevant legal advice and increased accountability in terms of understanding how competently the Council administered its finances.
43. Against these public interest factors must be weighed the public interest in maintaining the exemption and preserving the protection provided by legal professional privilege.
44. There is a weighty public interest in preserving the principle that a client can consult with their legal adviser in a full and frank manner. That they can lay out all the issues relevant to the legal issue they require advice on and that the lawyer can respond in full to those issues. This may include explaining any weaknesses in their client's position. Without being able to have such frank exchanges it would not be possible for clients to obtain the best legal advice possible and so defend their legal rights. That is why legal professional privilege is considered to be a cornerstone of the English legal system.
45. The Commissioner also notes that the issues to which the legal advice relates are relatively recent. The AKA independent review published in January 2012 and the internal review in respect of the outstanding allegations by SILL was only completed in June 2014. The Council has stated that it could be argued that any financial claims brought against the Council would still be within the limitation period. Therefore the Commissioner finds that the legal advice is still live.
46. The complainant has raised concerns that the Council's decision that the SIL tenants are not owed any money contradicts its previous legal advice. However this does not necessarily indicate that the Council acted recklessly in this matter or that its decision making process was flawed. It is clearly possible that legal advisers could reach different opinions on the same matter. This may depend in part on how much detail was

known about the issues at the time they were presented to the lawyer. Therefore the fact that the complainant believes the earlier advice obtained by the Council does not support the Council's decision does not undermine the Council's right to rely on legal professional privilege.

47. When considering the public interest factors in favour of disclosure the Commissioner has noted the value in people having confidence that the Council acted lawfully in this matter. The flip side of this argument is that it is often when a public authority's action are challenged in this way that it is most important for it to be able to rely on legal professional privilege so as to obtain the best advice.
48. Other factors that affect the balance of the public interest include whether the Council has misrepresented its legal advice in any way, the number of individuals affected by the matter and the amount of public money at stake. Having read the legal advice in question, the Commissioner is satisfied that it has not been misrepresented by the Council. The number of tenants directly affected by the payment and charging policies is understood to be approximately twelve. Although the Commissioner recognises that these are all vulnerable adults, a factor he has already taken account of, the actual number of those involved is relatively small. As the Council does not accept that the tenants are entitled to any reimbursement, the amount of public money involved and that these individuals may be entitled to, is difficult to estimate. Therefore the Commissioner is not in a position to give much weight one way or another to this factor above the value in the public understanding how competently the Council manages its finances as discussed already.
49. In conclusion the Commissioner finds that there is a significant public interest in disclosing information which would help people understand what is still regarded as a controversial decision by the Council in respect of a vulnerable section of the community. However the Commissioner considers the value in preserving the principle of legal professional privilege, particularly considering the legal advice is still live, outweighs the public interest in disclosure. The Council is entitled to rely on the exemption provided by section 42 to withhold the information.

Section 36 – prejudice to the conduct of public affairs

50. There is one piece of information to which section 42 has not been applied, that being the Appendix 11 to document 12. This information was initially withheld under section 30(2) – information provided by confidential sources, and the Council later applied section 31 in the alternative. The Council also claimed the information was exempt from disclosure under section 36(2)(b)(i) and (ii)

51. Section 36(2)(b) states that information is exempt if, in the reasonable opinion of the qualified person, its disclosure would be likely to inhibit –
- (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation.
52. Section 36 is unique in that its application depends on the opinion of the qualified person that the inhibition envisaged would, or would be likely to occur. In determining whether the exemption was correctly engaged by the Council, the Commissioner is required to consider the qualified person's opinion as well as the reasoning that informed the opinion. Therefore the Commissioner must:
- Ascertain who the qualified person is,
 - Establish that they gave an opinion,
 - Ascertain when the opinion was given, and
 - Consider whether the opinion was reasonable.
53. For local authorities the qualified person is the Council's Monitoring Officer. When asked to confirm when the Monitoring Officer provided his opinion the Council explained that due to the complex nature and sensitivity of the information sought by the complainant, the Monitoring Officer had been involved from the start of the case handling process. However it is apparent from the fact that the Council only cited section 36 after the Commissioner had commenced his investigation that his opinion was not sought when initially refusing the request or at the internal review stage. However a public authority cannot be barred from applying an exemption during the Commissioner's investigation. The Monitoring Officer wrote to the Commissioner's office setting out his view that the information in question would engage both section 36(2)(b)(i) and (ii) on the 19 November 2015. Therefore the Commissioner has taken this to be the date on which the exemption was first applied.
54. The Commissioner notes that the qualified person's opinion was that disclosing Appendix 11 would be likely to inhibit the free and frank provision of advice or exchange of views. That is, he considered the inhibition was only 'likely' to occur, rather than it 'would' occur.
55. It is now necessary to consider whether that opinion was reasonable. To do so the Commissioner relies on the Oxford English Dictionary's definition of reasonableness, that is, the opinion must be "in accordance with reason; not irrational or absurd". There can be more than one

reasonable opinion on a matter and it is not necessary for the Commissioner to agree with the qualified person's opinion. The qualified person's opinion can only be considered unreasonable if it is one that no reasonable person could hold.

56. The Commissioner has viewed Appendix 11. Obviously it is not appropriate to discuss its contents, but the Commissioner is prepared to say that it consists of a report into specific events, discusses how the Council handled the issues and the lessons learnt as well as setting out what new procedures were subsequently put in place. Although it may have informed decision making at the time it was produced, it is difficult to characterise the information itself as being either the provision of advice or an exchange of views.
57. Nevertheless the Commissioner considers that it does relate to sensitive matters and candidly reports how they were dealt with, including the identification of problems with the processes followed. These are the sort of issues that often have to be addressed when providing advice or debating difficult issues. The Council has argued that if Appendix 11 was disclosed it would have a chilling effect on both the free and frank provision of advice and exchange of views. Having viewed the actual content of the information in question the Commissioner recognises the potential for the disclosure to have such an effect.
58. Therefore the Commissioner is satisfied that it is reasonable for the qualified person to conclude that disclosing this information would be likely to inhibit both the free and frank provision of advice and the free and frank exchange of views in the future.
59. Although the information relates to events that took place some time ago the Commissioner is satisfied that the issues remain sensitive. Further it is apparent that they remain relevant to more recent issues as is evidenced by the fact that the report was forwarded to the senior manager by the Director of Adult Social Services in order to ensure he had an overview of all matters relating to the review he was conducting.
60. The Council has also argued that it was imperative the author of Appendix 11 had safe space in which to consider the difficult issues he was reporting on. The Commissioner accepts that this would have been the case at the time he was producing the report. However the report contained in Appendix 11 is several years old and the need for safe space has long passed. So even though it is reasonable to consider disclosing the report could prejudice the candour of advice and the deliberation of similar or related issues in the future the Commissioner finds the safe space arguments are not relevant.

61. Finally it is important to consider what information the qualified person based his opinion on when applying section 36. It is clear from his letter to the Commissioner's office that he has had direct involvement in the handling of the complainant's request. The Council has stated that the qualified person was involved in the handling of the request from the start of the process. Therefore although the Council has not explicitly set out what information he had access to, the Commissioner considers that he has had the opportunity to study the appendix. Furthermore, from the communications captured by the request it is clear that the Monitoring Officer was also privy to the issues covered by the senior manager's review at the time it was being carried out, including his attendance at meetings to discuss those issues. Therefore the Commissioner is satisfied the Monitoring Officer would have been familiar with the contents of Appendix 11 and issues addressed by the review when forming his opinion as to its sensitivity.
62. The Commissioner is therefore satisfied that the opinion is reasonable; the exemptions provided by section 36(2)(b)(i) and (ii) are engaged.

Public interest

63. Section 36 is subject to the public interest test and again the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.
64. The Council has recognised that there are public interest factors in favour of disclosure. These include greater transparency in the process of the provision of advice and decision making. The Council has also noted the public interest in providing an insight into how the Council reviews and concludes on important matters of the day.
65. The Commissioner accepts these arguments but notes that as stated at paragraph 56 the information itself cannot be characterised as being the provision of advice or exchange of views for the purposes of deliberation. Therefore its disclosure would not shed great light on these processes.
66. However the Commissioner gives more weight to the public interest in providing an insight into how the Council reviewed the matters addressed by the report in Appendix 11. Again it is difficult to explain the value in disclosing the report without risking revealing its content. However the Commissioner is prepared to say that the information is not directly about the issues raised by the request, ie whether the Council owes the tenants and former tenants of SIL money. Its focus is on a separate, but related matter. Disclosing the information would not therefore serve the public interest in providing greater transparency

over the specific issue of whether the Council owes the tenants money. Nevertheless disclosing the report would shed light on how the Council acted in an important matter concerning the protection of vulnerable adults. The Commissioner finds that there is a strong public interest in disclosing such information.

67. In favour of withholding the information the Council has argued that the disclosure would inhibit the giving of robust advice and guidance and that it would have a detrimental effect on the work of officers reviewing and concluding on important issues. This would lead to poorer decision making.
68. To a large extent this simply reiterates the harm that the two exemptions are there to protect against. Nevertheless the Commissioner gives weight to the fact that the qualified person, a senior officer within the Council, has reached a firm and serious view that disclosing the report has the potential to prejudice decision making. However it is also noted that the qualified person's opinion is that it was only likely that the prejudice would occur. This reduces the weight that can be afforded to the potential harm that disclosing the report could have.
69. It is now necessary to consider the severity, extent and frequency of the prejudice which the qualified person believes is likely to occur.
70. As already noted the report relates to a serious matter concerning the protection of vulnerable adults. It sets out very clearly the concerns the Council had over the particular issue and the events that gave rise to those concerns. The Commissioner finds that without that level of candour the report could not have properly reviewed or reported on those concerns. To deter officers from producing such reports would have a serious and detrimental impact on their ability to both report on serious concerns in general and the consideration of issues affecting vulnerable adults in particular.
71. The Council has not provided any indication of the frequency with which it has to deal with matters similar to those addressed by the report. Although such matters may not arise on a daily basis, the Commissioner considers it inevitable that the Council will need to deal with issues relating to the safeguarding of vulnerable members of the community in the future and that when it does, it would need to discuss those matters in a free and frank manner.
72. In light of the above the Commissioner finds that due to the potentially serious impact disclosing the information would have on the Council's ability to review and report on serious issues and in particular concerns relating to vulnerable adults there is a weighty public interest in maintaining the exemption

73. Although there is a public interest in revealing how the Council had addressed a serious concerns relating to vulnerable adults this is outweighed by the need to preserve the Council's ability to properly examine and report on such concerns. The public interest lies in favour of maintaining the exemption and therefore the Council is entitled to withhold Appendix 11.

Section 10 - time for compliance

74. Although not an issue directly raised by the complainant the Commissioner has considered the time the Council took to comply with the request.
75. Section 10 states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the receipt of the request.
76. The request was originally made on the 12 December 2014. To comply with the statutory time limit of twenty working days the Council should have provided a response by the 15 January 2015. The Council initially failed to provide any response and it was only after the complainant chased the Council that he was finally provided with a response on the 16 April 2015. This is clearly a breach of section 10.
77. The Commissioner monitors the late compliance with requests and where a pattern emerges he will consider whether further action is required in order to ensure the authority meets its obligations.

Right of appeal

78. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

79. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

80. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF